

**FISH AND GAME COMMISSION  
STATEMENT OF PROPOSED EMERGENCY  
REGULATORY ACTION**

**Emergency Action to Amend Title 14, Section 150.16  
Re: Cumulative Trip Limits for Cabezon, Greenlings and California Sheephead**

**I. Statement of Facts Constituting Need for Emergency Regulatory Action:**

Current and proposed regulations impacting the state's commercial nearshore fishery in 2003 currently allow for a "derby" fishery to harvest cabezon, greenlings, and California sheephead (CGS) for the first two months of the year. If left unchanged, based on recent trends in catch, the fishery would operate in a such a way that participants take as many fish as possible as quickly as possible, which is not conducive to stable fisheries and fisheries marketing. Emergency regulations are needed to prevent the commercial take of the entire, or a significant part, of the authorized annual harvest (optimum yield or OY) of CGS during the first two months of 2003.

Although there are annual harvest limits, closed areas, closed seasons, statutory gear restrictions and a permit requirement to commercially land these species, no regulations serve to curtail the volume of CGS fisheries during the open season of a given fishing year.

Prior to the implementation of a nearshore restricted access program which includes CGS fisheries proposed for April 2003, some participants may utilize their last opportunity to fish for these species in the first two months of the year. This increase in activity may lead to increased landings in early months of the season over heightened levels witnessed in 2002. Without additional emergency regulatory action to constrain overall catch levels in the months of January and February, there is a reasonable likelihood that a significant portion, or all of the allowable commercial catch of CGS, will be taken in this two-month time period. This outcome would not be in the interest of the state or the state's fishery resources for the following reasons:

A. Current federal commercial regulations for rockfish call for a 10-month rockfish season for areas south of Cape Mendocino. Allowing for a CGS fishery to be open while nearshore rockfish fisheries are closed and vice-versa creates a significant potential for bycatch, as both nearshore rockfish and CGS reside in similar habitats, and frequently are caught in conjunction with one another. Given the allowable harvest levels for rockfishes for January and February 2003 (200 aggregate pounds of shallow nearshore rockfish and 200 aggregate pounds of deeper nearshore rockfish for the 2-month time period), if similar

catch levels are not instituted for CGS fisheries, there would likely be significant bycatch and discard of rockfishes which may occur while actively pursuing high-volume CGS fisheries.

B. The Commission will be considering adoption of a restricted access program in December 2002 which may significantly curtail the number of participants in the state's CGS fisheries. Currently, the Department has issued 502 Nearshore Fishery Permits, which authorize commercial harvest of CGS, California scorpionfish, and shallow nearshore rockfishes. The Department is recommending a program that will result in a reduction to 174 permits. If adopted, the reductions will be implemented in April 2003 concurrent with the beginning of the new commercial fishing season. In establishing a nearshore restricted access program, there is an expectation that when the commercial fishery re-opens in May pursuant to Section 150.06, Title 14, CCR, that allowable catch levels specified in Section 52.10, Title 14, CCR, will not already be attained for the year. That expectation may not be met if CGS fishing occurs at increased effort levels in January and February, which may be a likely result of severe restrictions and closures to west coast shelf fisheries or fisheries that interact with overfished rockfish species.

C. Fishermen have indicated in testimony and in writing to the Commission that a large percentage of cabezon are spawning in the months of January and February.

D. A "derby" fishery coupled with a protracted fishing season negatively impacts fish buyers, as large volume of the product is available for only a short period of time. A longer fishing season with controlled catch volume allows for a more steady supply to markets, prevents saturation, and generally allows for higher ex-vessel prices paid to fishermen over the course of the open season.

### ***Description of Proposed Regulatory Action***

The Department recommends emergency action establishing individual two-month cumulative trip limits as a 'stop gap' measure to hamper the derby fishery for the open fishing areas and time periods pursuant to Section 150.06 between the dates of January through April 2003. These trip limits would apply to individuals who hold a nearshore fishery permit which authorizes take of CGS pursuant to Section 150.01, Title 14, CCR. The Department is recommending cumulative limit values as follows:

Cabezon: 200 pounds per cumulative limit period  
Greenlings: 50 pounds per limit period  
Sheephead: 400 pounds per limit period

Cumulative trip limits are a fishery management tool which serve to prevent a 'derby' fishery by spreading the allowable catch among participants over a longer period of time. Trip limits serve to cap individual performance at a specified level, while not reducing fishing efficiency (which may be best accomplished through gear restrictions). These catch restrictions strive to keep overall catches at approximately 20 percent of the total commercial allocation for the two-month period, which would allow for a 10-month fishing season consistent with federal regulations for nearshore rockfish.

***Recent Catch Information on CGS Commercial Fisheries Supporting the Need for Emergency Regulatory Action***

Increases in effort in CGS fisheries have been prompted by a strong market demand and premium prices paid for live fish, coupled with severe restrictions to other fisheries such as shelf rockfish. Beginning with the 2001 fishing season, the Commission took action to reduce commercial harvest levels of CGS to 50 percent of average catch levels between 1994 and 1999, resulting in the establishment of optimum yields and allocations specified in Section 52.10, Title 14, CCR. As a result, fishing seasons have become shortened, as closure actions were needed in 2001 and 2002 to keep catches within these allowable levels. These market and regulatory actions provoked individuals to develop efficient fishing methods to catch the greatest volume in the shortest amount of time, resulting in a "derby" type fishery.

Department landing receipt data indicates that in 2002, 46 percent of the cabezon optimum yield was taken in the first two months of the open season, while 54.5 percent of greenlings and 36.9 percent of sheephead were taken in those months in those fisheries. This is a substantial increase of the percentage of the total catches made in the first two months of the open season for 2001 and 2000 (Table 1).

Table 1: Percentage of Total Commercial Catch Taken in the First Two Months of the Season

Species	2000	2001	2002
Cabezon	12.2%	19.3%	46.0%
Greenlings	13.5%	32.6%	54.5%
California Sheephead	27.4%	24.4%	36.9%

\*The months of the year when the season opened may vary depending on regulations that applied to various geographic areas.

Fishery behavior over two-month cumulative time periods (January/February, March/April, May/June, July/August) in 2002 reveal that as the implementation of proposed trip limits as described in this regulatory action may serve to keep

catches within a target of approximately 20 percent of the commercial allocation for the year, which would allow for a 10-month CGS fishery.

Table 2: Target Catch Levels for January/February, 2003

Species	Commercial allocation (lbs)	Catches in first two-month open period in 2002	Expected catches in January/February 2003 under proposed trip limits
Cabazon	94,398	49,179 (46%)**	20,879 (22.1%)
Greenlings	13,420	9,840 (54.5%)**	3,578 (26.7%)
California Sheephead	87,959	41,629 (36.9%)**	18,716 (21.3%)

\*\* Percentages reflect catches in the first two-month open period in 2002, divided by the total catch in 2002. Total catches for the year somewhat exceeded the commercial allocations listed above.

Landings data also reveal that a small number of “high-liners” exist in the CGS fishery, which account for a considerable portion of the total allowable commercial harvest of these species. While cumulative individual trip limits will hinder the performance of these individuals, the regulatory action will serve to spread the catch more equally between fishery participants as well as through time. See section on economic impacts for additional information.

Landings of CGS have been centered in specific areas of the state, and not distributed evenly statewide. This has allowed some parts of the coast to take the majority of the allowable catch resulting in closure of the fishery before other regions get much opportunity to fish due to seasonal restrictions or weather constraints. As cumulative trip limits will serve to spread the catch out through a longer open fishing season, it therefore may provide for greater distribution of the catch statewide.

### ***Timing of Other Regulatory Actions Addressing CGS Commercial Fisheries***

At the December 6<sup>th</sup> Commission meeting, the Department is requesting authorization for the Commission’s staff to publish notice to amend regulations that would implement Phase II of the Nearshore Fishery Management Plan (NFMP). This regulatory package involves several components of CGS management, including regional Total Allowable Catches (TACs), commercial trip limits and options on how they may be structured, modification of current weekday closure regulations, and cleanup of trip limit regulatory requirements. This proposed regulatory package will serve to address the “derby” fishery and regional management for CGS over the long-term. However, given the time constraints of the APA rulemaking process, this regulatory package could not be fully developed and implemented prior to the season opening on January 1. Therefore, while this emergency regulatory action is necessary as a stop-gap

measure to cover fishing activities in the first months of the year, the Department is proposing a more comprehensive approach that will be considered for adoption at the Commission's April meeting, for implementation by May.

Additionally, Phase I of NFMP implementation will be considered for adoption at the December 6<sup>th</sup> meeting. The proposal includes eliminating conflicting fishing seasons for nearshore rockfish and CGS, and proposes to bringing CGS regulations for the Northern Rockfish and Lingcod Management Area [40 degrees, 10' N. lat (near Cape Mendocino) to the Oregon Border] into alignment with either the 2003 nearshore rockfish season in the northern area or the CGS season in the rest of the state; thus eliminating conflicting fishing seasons for CGS and nearshore rockfish. The action, if approved, results in the statewide opening of CGS fisheries on January 1.

Given the proposed implementation of the nearshore restricted access program in April 2003 which could result in eliminating approximately two-thirds of current permittees, it is difficult to predict fishery behavior for the first few months of 2003. While many may not become active knowing they will likely not be able to renew their permit, if trip limits are not established it is possible that others may take advantage of their last opportunity to fish these species without limitations to cap individual catch levels.

## **II. Alternatives**

The Department frequently relies on the use of allowable catch levels which serve to cap the total volume of a particular fishery within a particular period of time. However, this regulatory action proposes to use individual cumulative trip limits to curtail catch in the fishery in the first quarter of the year, rather than establishing a discrete harvest guideline for this time period. The selection of this approach over a harvest guideline was made recognizing that the Department is not capable of tracking commercial catches real-time throughout the state. Over such a short time period, in-season tracking for quota attainment would not allow for closure to occur in time to successfully prevent the "derby."

Therefore, the Commission has determined that no alternative considered would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **III. Economic Impact of Proposed Regulatory Action:**

The Commission has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action and has made the

following determinations relative to the required statutory categories:

(a) Significant Adverse Economic Impact Directly Affecting Businesses:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. While total catch levels of CGS in January and February of 2003 will be curtailed under the proposed regulatory action, the overall allowable harvest levels for the year will not be impacted, and therefore, no loss in annual revenue to businesses involved in CGS fisheries will result from this action. While individual losses in the two-month period reflected in Table 3 below show the impacts to individuals in this time period, they will have continued opportunities over a longer fishing season in 2003 provided they qualify for renewal of their Nearshore Fishery Permit according to specifications of the restricted access program to be implemented in April, 2003. A longer fishing season at lower volumes of catch may serve to keep prices paid to fishermen higher, and revenue to business higher given a more steady supply.

(b) Economic Impact on Private Persons: As this measure serves to equitably spread available catch between fishery participants, some individuals will suffer economic loss from the proposed regulatory action, while the proposed catch levels will not hinder the activities of many other permittees during this time period. Currently, 502 individuals are authorized to fish for CGS under a Nearshore Fishery Permit, some of which have previous catch levels which exceed the proposed limits for the first months of 2003. From an analysis of 2002 catch information, if the proposed trip limits had been instituted for the first two months of the open fishing season, the impacts to individual permit holders would be as described in Table 3 below. See subsection III (a) for additional details.

Table 3: Impact of Trip Limits in January/February 2003 to Current Individual Permittees

Species	Number of Individuals Landing in Excess of the Proposed Cumulative Limit Values in 2002	Range of Monetary Loss per Individual in the two-month period under Proposed Cumulative Limits	Average Loss per Individual	Total Loss in the first two months of the fishing season
Cabazon	61	\$8-\$16,251	\$1,647	\$100,440
Greenlings	43	\$2-\$4,702	\$658	\$28,307
California Sheephead	29	\$16-\$20,349	\$2,529	\$73,335

(c) Adversely Impact the Ability of California Businesses to Compete with Businesses in Other States: None.

(d) Impact the Creation or Elimination of Jobs or Businesses or the Expansion of Businesses in California: None.

(e) Fiscal Impact on Public Agencies, Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(f) Involve Nondiscretionary Costs/Savings to Local Agencies: None.

(g) Mandate Programs on Local Agencies or School Districts: None.

(h) Impose Costs to Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(i) Affect Housing Costs: None.

#### **IV. Plain English Policy Statement:**

It has been determined that the adoption/amendment of these regulations may affect small businesses. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342(e) and 11346.2(a)(1).

#### **V. Authority and Reference:**

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by Section 240 of the Fish and Game Code and to implement, interpret, or make specific Section 240 of said Code. Also, the Commission proposes this action based on authority of Fish and Game Code Sections 7071, 8587.1 and 8588, authorizing the Commission to adopt regulations governing nearshore fish stocks.

Reference sections include Fish and Game Code Sections 240, 8585.5, 8587.1 and 8588.

#### **VI. Section 240 Finding**

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate

preservation of the public peace, health and safety, or general welfare.

## **Informative Digest (Plain English Overview)**

Current and proposed regulations impacting the state's commercial nearshore fishery in 2003 allow for a "derby" fishery to harvest cabezon, greenlings and California sheephead (CGS) for the first two months of the year. Without emergency regulatory action to constrain overall catch levels in the months of January and February, there is a reasonable likelihood that a significant portion, or possibly all of the allowable commercial catch of CGS, will be taken in this two-month time period. In order to minimize bycatch, allow for effective implementation of the proposed nearshore restricted access program, maintain a 10-month fishing season, and streamline the CGS fishing seasons to federal seasons for nearshore rockfish, the derby fishery in January and February of 2003 must be curtailed.

The Department recommends emergency action establishing individual two-month cumulative trip limits as a 'stop gap' measure to hamper the derby fishery for the open fishing areas and time periods between the dates of January through April 2003. The Department is recommending individual cumulative limit values for two-month limit periods as follows:

Cabazon: 200 pounds per two-month cumulative limit period

Greenlings: 50 pounds per limit period

California Sheephead: 400 pounds per limit period

These trip limits would apply to individuals who hold a nearshore fishery permit which authorizes them to take CGS. Although regulations establish annual harvest limits, closed areas, closed seasons and a permit requirement to commercially land these species, at this time no regulations serve to curtail the volume of these fisheries during the open season of a given fishing year.

While not an emergency, current regulatory language in subsections (e), (f) and (g) of Section 150.16 is being removed as these subsections were repealed effective January 1, 2002.